House Buyer Tribunal & Anor v Unique Creations Sdn Bhd and other appeals

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-01–503 OF 2010, W-01–504 OF 2010, W-01–507 OF 2010, W-01–509 OF 2010, W-01–511 OF 2010 AND W-01–512 OF 2010
MOHD HISHAMUDIN, ABDUL AZIZ ABD RAHIM AND MOHAMAD ARIFF JJCA
5 MARCH 2014

Civil Procedure — Limitation — Contract — Sale and purchase of property — Action by purchaser for liquidated assessed damages — Whether claim time barred — Whether applicable limitation period under s 6(1)(a) of the Limitation Act 1953 or s 16N of the Housing Development (Control and Licensing) Act 1966

Contract — Sale and purchase of property — Delay in completion — Action by purchaser for liquidated assessed damages — Whether claim time barred — Whether applicable limitation period under s 6(1)(a) of Limitation Act 1953 or s 16N of the Housing Development (Control and Licensing) Act 1966

Land Law — Housing developers — Delay in completion — Action by purchaser for liquidated assessed damages — Whether claim time barred — Whether applicable limitation period under s 6(1)(a) of the Limitation Act 1953 or s 16N of the Housing Development (Control and Licensing) Act 1966

Limitation — Contract — Sale and purchase of property — Action by purchasers for liquidated assessed damages — Whether claim time barred — Whether applicable limitation period under s 6(1)(a) of the Limitation Act 1953 or s 16N of the Housing Development (Control and Licensing) Act 1966

Statutory Interpretation — Construction of statutes — Rules of construction — Generalibus specialia derogant — Limitation periods — Whether s 16N of the Housing Development (Control and Licensing) Act 1966 overrides s 6(1)(a) of the Limitation Act 1953

The second appellant (Abd Aziz bin Osman) ('the appellant') had bought an apartment unit from the respondent (Unique Creations Sdn Bhd), a housing developer licensed under the Housing Development (Control and Licensing) Act 1966 ('the Act'). They entered into a sale and purchase agreement ('the

SPA') on 12 September 1997. Under the SPA, the dateline for delivery of vacant possession was 12 September 2000. However, vacant possession was only delivered on 30 March 2007. The appellant filed his claim for liquidated ascertained damages ('LAD') before the tribunal pursuant to ss 16L, 16M(1) and 16N(2) of the Act. The respondent contended that the appellant's claim was founded on contract and thus was time barred by virtue of s 6(1)(a) of the Limitation Act 1953 ('LA'). The respondent argued that the alleged breach occurred on 12 September 2000 and, therefore, the appellant's claim should have been brought before the tribunal latest by 12 September 2006. The tribunal rejected the respondent's contention and made an award in favour of the appellant on the grounds that in the light of s 16N(2) of the Act, s 6 of the LA did not apply to the appellant. The High Court however allowed the respondent's application for judicial review and quashed the award of the tribunal. The appellant appealed against this decision. The issue arising in this appeal was whether the tribunal erred in law in ruling that s 16N(2) of the Act overrides s 6 of the LA.

Held, allowing the appeal with costs:

(1) The correct interpretation of s 16N is that, as long as the claim of the aggrieved homebuyer is made within 12 months of the delivery of vacant possession, the tribunal has the jurisdiction to hear the claim and make an award. The LA does not apply to a homebuyer who makes his claim pursuant to s 16N(2) of the Act. A person making a claim under s 16N(2) of the Act is subject to a different limitation period, that limitation period being that the claim must be made within 12 months of the delivery of vacant possession; meaning that for the purpose of this 12 month period, time begins to run only from the date of the actual delivery of vacant possession whenever that might be (see para 22).

(2) Section 16N(2) of the Act is a special or specific provision of law on limitation applicable to homebuyers making a claim before the tribunal pursuant to the Act; whereas s 6 of the LA is a general provision of law on limitation pertaining to claims under tort and contracts. It is a principle of construction of statutes expressed in the maxim *generalibus specialia derogant* that where there are two provisions of written law, one general and the other specific, then the special or specific provisions excludes the operation of the general provision (see para 23).

[Bahasa Malaysia summary

Perayu kedua (Abd Aziz bin Osman) ('perayu') telah membeli unit pangsapuri daripada responden (Unique Creations Sdn Bhd), pemaju perumahan lesen di bawah Akta Pembangunan Perumahan (Kawalan dan Lesen) 1966 ('Akta'). Mereka memasuki perjanjian jual beli ('SPA') pada 12 September 1997. Di bawah SPA, tarikh akhir untuk pemberian milikan kosong adalah 12 September 2000. Walau bagaimanapun, milikan kosong hanya diberikan pada

30 Mac 2007. Perayu gagal dalam tuntutannya untuk ganti rugi yang ditetapkan ('LAD') di hadapan tribunal berikutan ss 16L, 16M(1) dan 16N(2) Akta. Responden berhujah bahawa tuntutan perayu adalah berdasarkan atas kontrak dan oleh itu dihalang masa mengikut s 6(1)(a) Akta Had Masa 1953 ('AHM'). Responden berhujah bahawa kemungkiran yang didakwa tersebut berlaku pada 12 September 2000 dan, oleh itu, tuntutan perayu patut dibawa di hadapan tribunal selewat-lewatnya pada 12 September 2006. Tribunal menolak hujahan responden dan memberi award memihak perayu atas alasan bahawa berdasarkan s 16N(2) Akta, s 6 AHM tidak digunapakai kepada perayu. Mahkamah Tinggi walau bagaimanapun membenarkan permohonan responden untuk semakan kehakiman dan membatalkan award tribunal. Perayu merayu terhadap keputusan ini. Isu berbangkit dalam rayuan ini adalah sama ada tribunal tersilap dari segi undang-undang dalam memutuskan bahawa s 16N(2) Akta mengatasi s 6 AHM.

Diputuskan, membenarkan rayuan dengan kos:

(1) Tafsiran yang betul s 16N adalah bahawa, asalkan tuntutan pembeli rumah yang tidak puas hati dibuat dalam masa 12 bulan pemberian milikan kosong, tribunal memunyai bidang kuasa untuk mendengar tuntutan dan membuat award. AHM tidak digunapakai kepada pembeli rumah yang membuat tuntutannya berikutan s 16N(2) Akta. Seseorang yang membuat tuntutan di bawah s 16N(2) Akta adalah tertakluk kepada tempoh had masa yang berbeza, bahawa tempoh had masa mesti dibuat dalam masa 12 bulan dari pemberian milikan kosong; bermaksud bahawa untuk tujuan tempoh 12 bulan ini, masa mula bergerak dari tarikh pemberian sebenar milikan kosong pada bila-bila masa yang mungkin (lihat perenggan 22).

(2) Seksyen 16N(2) Akta adalah peruntukan undang-undang khas atau spesifik atas had masa yang digunapakai kepada pembeli rumah yang membuat tuntutan di hadapan tribunal berikutan Akta; sebaliknya s 6 AHM adalah peruntukan undang-undang am atas had masa berkaitan kepada tuntutan-tuntutan di bawah tort atau kontrak. Adalah prinsip tafsiran statut yang dinyatakan di dalam maksim *generalibus specialia derogant* bahawa di mana terdapat dua peruntukan undang-undang bertulis, satu am dan yang satu lagi spesifik, oleh itu peruntukan khas atau spesifik mengecualikan pengunaan peruntukan am tersebut (lihat perenggan 23).]

Notes

For cases on contract, see 2(3) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 5745–5750.

For cases on delay in completion, see 3(3) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 6258–6265.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2004–2030.

Legislation referred to

Housing Development (Control and Licensing) Act 1966 ss 16B, 16M(1), 16N(2)

Limitation Act 1953 s 6, 6(1)(a)

Appeal from: Judicial Review Applications Nos R1–25–209 of 2007, R1–25–266 of 2007, R1–25–299 of 2007, R1–25–341 of 2007, R1–25–300 of 2008 and R1–25–377 of 2007 (High Court, Kuala Lumpur)

Govin T Durai (Govin T Durai & Co) for the appellants.
Desmond Choi (Ridzal bin Zulkifli with him) (SR Yap, Desmond & Ridzal) for the respondent.

Mohd Hishamudin JCA (delivering judgment of the court):

[1] The following six appeal cases, namely:

(a) CIVIL APPEAL NO W-01–503 of 2010;

(b) CIVIL APPEAL NO W-01–504 of 2010;

(c) CIVIL APPEAL NO W-01–507 of 2010;

(d) CIVIL APPEAL NO W-01–509 of 2010;

(e) CIVIL APPEAL NO W-01–511 of 2010; and

(f) CIVIL APPEAL NO W-01–512 of 2010,

were called up before us for hearing. Counsel for the respective parties in respect of all the appeals are the same; and they informed us that parties have come to an agreement that they would proceed with the hearing of only one case, namely, Civil Appeal No W-01–503 of 2010, and that the decision of this court in respect of this case would bind the remaining five appeal cases.

[2] This appeal (Civil Appeal No W-01–503 of 2010) is against the decision of the High Court of Kuala Lumpur (Appellate and Special Powers Division) of 30 March 2010 which had allowed the judicial review application of the respondent (the applicant at the High Court). The High Court had issue a writ of certiorari to quash the decision of the House Buyer Tribunal ('the tribunal')

of 25 July 2007 that had given an award in favour of the second appellant (the second respondent at the High Court). A

[3] The second appellant (Abd Aziz bin Osman) was the *claimant* before the tribunal; whilst the respondent (Unique Creations) in this appeal, was the *respondent* before the tribunal. B

[4] On 30 May 2013, we, unanimously, allowed the appeal with costs. We set aside the order of the High Court and restored the award of the tribunal. C

[5] We now give our grounds.

[6] The second appellant (Abd Aziz bin Osman) ('appellant') had bought an apartment unit from the respondent (Unique Creations Sdn Bhd), a housing developer licensed under the Housing Development (Control and Licensing) Act 1966 ('the Act'). D

[7] They entered into a sale and purchase agreement ('the SPA') on 12 September 1997. This SPA is governed by the Act. E

[8] Under the SPA, the dateline for delivery of vacant possession by the respondent to the appellant is 36 months after the signing of the SPA, that is to say, on or before 12 September 2000. F

[9] However, in the present case, delivery of vacant possession was only effected on 30 March 2007. It was agreed that there was a delay of 2391 days. The appellant claimed for liquidated ascertained damages (LAD) in the sum of RM57,875.30 pursuant to cl 22 of the SPA. G

[10] The respondent refused to pay the LAD claimed by the appellant.

[11] The appellant, therefore, on 9 May 2007, filed his claim for the LAD before the tribunal pursuant to ss 16L, 16M(1) and 16N(2) of the Act. H

[12] The tribunal was established pursuant to s 16B of the Act.

[13] The jurisdiction of the tribunal to entertain such a claim is provided for by s 16N(2) of the Act. This section provides: I

> (2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is

brought by a homebuyer not later than 12 months from —

(a) The date of issuance of the certificate of completion and compliances for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later;

(b) The expiry date of the defects liability period as set out in the sale and purchase agreement; or

(c) The date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later.

[14] Before the tribunal, the respondent contended that the appellant's claim, which was based on the SPA, was founded on contract and thus is time barred by virtue of s 6(1)(a) of the Limitation Act 1953. Section 6 of the Limitation Act provides:

6 Limitation of actions of contract and tort and certain other actions.

(1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

(a) actions founded on contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

[15] The respondent argued that the alleged breach occurred on 12 September 2000 and, therefore, the appellant's claim should have been brought before the tribunal latest by 12 September 2006.

[16] The tribunal rejected the respondent's contention and made an award in favour of the appellant on the grounds that in the light of s 16N(2) of the Act, s 6 of the Limitation Act does not apply to the appellant. In other words, s 16N(2) of the Act overrides s 6 of the Limitation Act.

[17] The tribunal, however, only made an award of RM50,000 (plus interests) to the appellant. This is because by virtue of s 16M(1) of the Act, the jurisdiction of the tribunal to make an award is limited to a maximum of RM50,000 only.

[18] The respondent filed an application for judicial review on the basis that the tribunal, by not applying s 6 of the Limitation Act to the appellant's claim and dismissing the claim, had committed an error of law. A

[19] The learned High Court judge granted the judicial review application and quashed the award of the tribunal. B

[20] The only issue in this appeal is this: did the tribunal err in law in ruling that s 16N(2) of the Act overrides s 6 of the Limitation Act? C

[21] In our judgment, the tribunal was correct in law in ruling that s 16N(2) of the Act overrides s 6 of the Limitation Act. In other words, the learned High Court judge erred in law in quashing the award of the tribunal. D

[22] In our judgment, the correct interpretation of s 16N is that, as long as the claim of the aggrieved homebuyer is made within 12 months of the delivery of vacant possession, the tribunal has the jurisdiction to hear the claim of the appellant and to make and award. It is also our view that the Limitation Act does not apply to a homebuyer who makes his claim pursuant to s 16N(2) of the Act. In our opinion, a person making a claim under s 16N(2) of the Act is subject to a different limitation period, that limitation period being that the claim must be made within 12 months of the delivery of vacant possession; meaning that for the purpose of this 12 month period, time begins to run only from the date of the actual delivery of vacant possession — whenever that might be. This means that if he were to make a claim after the prescribed 12 month period, then his claim is barred by limitation. In other words, the 12 month period stipulation by s 16N(2) of the Act serves a dual purpose: the conferring of a right to an aggrieved homebuyer to make a claim before the tribunal as well as a special limitation period for such a claim. E F G

[23] Now, s 16N(2) of the Act is a special or specific provision of law on limitation applicable to homebuyers making a claim before the tribunal pursuant to the Housing Development (Control and Licensing) Act 1966; whereas s 6 of the Limitation Act is a general provision of law on limitation pertaining to claims under tort and contracts. It is a principle of construction of statutes expressed in the maxim *generalibus specialia derogant* that where H I

there are two provisions of written law, one general and the other specific, then the special or specific provisions excludes the operation of the general provision.

Appeal allowed with costs.

Reported by Kanesh Sundrum